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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL DELUNA-MARTINEZ,

Defendant and Appellant.

C085368

(Super. Ct. No. CM042759,
CM043465)

In this appeal, we consider the limits on a trial court's authority to seize, for the payment of restitution, funds held in a county jail inmate's commissary account. Defendant Daniel Deluna-Martinez challenges the trial court's order seizing 90 percent of his jail inmate commissary account. We will affirm.

BACKGROUND

In exchange for a stipulated 32-year sentence, defendant pleaded no contest to various counts. Later, the trial court ordered defendant's transfer to state prison delayed and his jail commissary account frozen until a restitution hearing could be held.

At the restitution hearing, the trial court ordered several thousand dollars in restitution to multiple victims. The prosecution then noted defendant had about \$3,700 in his commissary account and asked the court to order the jail to seize 90 percent of that account to be applied to the restitution order. The prosecution averred that when an inmate arrives at state prison from the Butte County Jail and no restitution order is in place, the prison cannot seize the commissary money the inmate arrives with and inmates can take advantage of that.

The court questioned whether it had authority to seize the funds and allowed the parties to brief the issue.

The prosecution submitted a “restitution enforcement brief,” explaining that a restitution order is enforced as a civil judgment. The most common procedure for collecting a money judgment is a writ of execution. But in lieu of a writ of execution, the People sought an order to seize and distribute 90 percent of the commissary fund.

The brief attached an “order to seize and distribute funds in inmate’s commissary account.” In pertinent part, the order provided: “The Butte County Sheriff is ordered to seize 90% of [defendant’s] commissary account and forward the seized funds to Butte County Collections. The remaining 10% is to remain with the inmate.”

During the hearing that followed, defense counsel pointed to Penal Code section 2085.5, which authorizes the deduction of up to 50 percent of a prisoner’s wages and trust account deposits to satisfy a restitution fine. He argued that any authority the court might have to attach money held in trust was limited to a 50 percent seizure, not 90 percent.

The court, citing *In re Betts* (1998) 62 Cal.App.4th 821 (*Betts*), noted Penal Code section 2085.5 applies to deductions from wages and deposits by the Department of Corrections and Rehabilitation—it does not apply to a trial court. Rather, under Code of

Civil Procedure section 704.090¹ only \$300 of an inmate's account is exempt from seizure or attachment. The court continued: "[I]n this case, the Court is finding that the Court is exercising its authority to execute a writ of execution and the Court will employ the order for the writ of execution as provided by the People. . . . [¶] . . . [¶] So the Court is going to order the Butte County Sheriff to seize no more than 90 percent of the commissary and forward the seized funds to the Butte County Collections Department to be distributed pro rata to the victims"

Both counsel declined the opportunity to be heard further. The court thereafter signed the order attached to the prosecution's motion. Defendant timely appealed.

DISCUSSION

I

The Order Is Authorized

On appeal, defendant contends the order seizing his funds was unauthorized because he was not a judgment debtor when the funds were deposited into his account. He is mistaken.

A "judgment debtor" is the person against whom a judgment is rendered. (§ 680.250.) All nonexempt property of a judgment debtor is ordinarily subject to enforcement of the judgment. (§ 695.010; *People v. Willie* (2005) 133 Cal.App.4th 43, 48; see also Pen. Code, § 1214 [a Penal Code section 1202.4 restitution order "may be enforced in the manner provided for the enforcement of money judgments generally"].) But \$300 of an inmate's trust account is exempt from enforcement of a restitution order. (§ 704.090, subd. (b); *Willie*, at p. 48.)

¹ Undesignated statutory references are to the Code of Civil Procedure.

Here, defendant became a judgment debtor when the trial court ordered restitution to the victims. Defendant concedes as much. As a judgment debtor, his nonexempt property is subject to enforcement of the judgment. (See §§ 695.010, 704.090.)

Defendant, nevertheless, attempts to draw a distinction between funds deposited into his account before he became a judgment debtor and funds deposited after. But this distinction finds no support in the statutory scheme. Section 704.090 refers to the “funds of a judgment debtor” and section 695.010 refers to “all property of the judgment debtor”—neither statute distinguishes between funds deposited before or after an inmate becomes a judgment debtor.

Undeterred, defendant notes that in *Betts*, *supra*, 62 Cal.App.4th 821, on which the trial court relied, the funds at issue accrued after *Betts* became a judgment debtor. Defendant argues *Betts* is materially distinguishable from his case in that his funds were deposited before he became a judgment debtor. *Betts* is of no help to defendant. In *Betts*, the defendant argued that his prison wages were not subjected to deduction, under Penal Code section 2085.5, until he had accumulated more than the amount exempted by section 704.090. (*Betts*, at pp. 822-823.) Rejecting that contention, the court noted the two sections are harmonious, and section 704.090 does not give him the unfettered right to build up his account to the exempted amount. (*Betts*, at pp. 823, 825.)

Betts in no way supports defendant’s argument that inmate funds deposited before becoming a judgment debtor are treated differently than funds deposited after. Accordingly, all but \$300 of defendant’s trust account is subject to enforcement of the restitution order.

Defendant next argues that assuming *arguendo* he was a judgment debtor, the trial court’s purported exercise of authority to execute a writ of execution was unauthorized. He reasons the property was under the control of a third person, which required service of

a copy of the writ of execution along with a notice of levy.² He argues the seizure order should be vacated on that ground. This argument fails as well.

Preliminarily, the record is silent as to what procedure followed the signing of the order to seize the funds. But more fundamentally, all but \$300 in defendant's inmate account is properly subject to enforcement. (§ 695.010.) To the extent the order diverged procedurally from a properly executed writ of execution, it remained its functional equivalent. Indeed, nothing indicates defendant's substantive rights were violated: a restitution order was lawfully imposed and defendant's funds (save for \$300) are subject to enforcement of that order. (See §§ 695.010, 704.090.)

II

The Order is Not Violative of Defendant's Due Process Rights

Defendant next contends he was denied fair and reasonable notice of how he might have limited the exposure of his funds to enforcement, in violation of his right to due process. He reasons that, with notice, his family could have withheld deposits until after his arrival at state prison, when the deposits would be subject to no more than a 50 percent deduction (Pen. Code, § 2085.5), rather than 90 percent. We disagree.

Initially, this claim is forfeited for failure to raise it below. (*People v. Rowland* (1992) 4 Cal.4th 238, 259 ["when . . . the defendant does not secure a ruling, he does not preserve the point. That is the rule. No exception is available"].) Were it not forfeited, it would still lack merit.

Defendant offers no authority for his contention that there is a due process right to notice of how best to structure an inmate deposit to minimize the amount susceptible to restitution. Defendant cites *Payne v. Superior Court* (1976) 17 Cal.3d 908 at page 927

² "[T]o levy upon tangible personal property in the possession or under the control of a third person, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the third person." (§ 700.040, subd. (a).)

for the proposition that “when a prisoner is threatened with a judicially sanctioned deprivation of his property, due process and equal protection require a meaningful opportunity to be heard.” But, here, defendant was afforded due process before deprivation of his property: a restitution hearing was held providing him the opportunity to challenge the amount of restitution ordered. Thus restitution was properly ordered, and his property was subject to enforcement of that restitution. He cannot now complain that he was not afforded notice of how he might shield more of his property from that lawful order of restitution.

DISPOSITION

The judgment (order) is affirmed.

RAYE, P. J.

We concur:

BUTZ, J.

MAURO, J.